

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY VAN DURMEN,

Petitioner,

v

Case No. 4:02-cv-184

KURT JONES,

Hon. Wendell A. Miles

Respondent.

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ORDER

On December 15, 2005, United States Magistrate Judge Ellen S. Carmody issued a Report and Recommendation recommending that petitioner's application for writ of habeas corpus be dismissed. On February 10, 2006, the court entered orders agreeing with the Magistrate Judge's conclusion that the petition must be dismissed for lack of exhaustion and ordering the petition dismissed on this basis. The matter is currently before the court on a letter from petitioner dated February 12, 2006 (docket no. 39) requesting "guidance" and inquiring whether his petition may be held in abeyance while he is pursuing his state remedies.

Because no action has (to this court's knowledge) been taken on petitioner's motion for new trial filed in the state court, his conviction is not yet final and the limitations period contained in 28 U.S.C. § 2244(d)(1) has not yet begun to run. "[S]tay and abeyance should be available only in limited circumstances." Rhines v. Weber, 125 S.Ct. 1528, 1535 (2005). "Even where stay and abeyance is appropriate, the district court's discretion in structuring the stay is limited by the timeliness concerns reflected in the AEDPA." Id. Here, no timeliness concerns are present at this time because the limitation period has not yet begun to run. Under the

circumstances, the court concludes that stay and abeyance is not warranted.

Petitioner appears to have authored his letter before he received the court's most recent rulings. (He asks the court to indicate whether the petition may be held in abeyance "[b]efore making any decision on my Petition[.]"') Hopefully, these rulings will provide the petitioner with the "guidance" he seeks, for the court cannot give petitioner legal advice on how to proceed. To the extent that petitioner seeks a stay and abeyance, his request is **DENIED**.

So ordered this 27th day of February, 2006.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge